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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1959

In the Matter of
WALTER O. ESTES,
Member of the State Bar.

No. 218

PETITION FOR WRIT OF CERTIORARI

WALTER O. ESTES,
Respondent In Pro Per.
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In the Matter of

WALTER O. ESTES,

Member of the State Bar.

No. .....

PETITION FOR WRIT OF CERTIORARI

Petitioner Walter O. Estes respectfully prays for a Writ of Certiorari to the Supreme Court of the State of Michigan to review the opinion of the Supreme Court of the State of Michigan entered February 19, 1959, as a final decision in the above entitled cause, affirming the Circuit Court order suspending this Petitioner from the practice of law for one year and until he shall have been reinstated and taxing all the expenses of said proceeding in the amount of $195.10.

I.

On September 24, 1952, the Circuit Court of Ingham County, Michigan, sitting as a 3-Judge Court, entered an order affirming the recommendation of the Grievance Committee for the Sixth Congressional District of the State Bar of Michigan for disciplinary action against this Petitioner and the said 3-Judge Court determined the punishment to be suspension from the practice of law for a period of one year and the payment of all the expenses of the proceeding in amount of $195.10. This Petitioner appealed to the Michigan Supreme Court and on February 19, 1959, the said Michigan Supreme Court affirmed that order on the ground that language used by the Petitioner in "ap-

pellants' brief in the Ziegenhardt Case" was "a direct attack upon the integrity of the trial judge" * * * "with no adequate basis" and constituted unprofessional conduct.

The entire opinion is set forth in Appendix hereto attached, item I.

II.

There are several statutes involved in this proceeding:

Section 14264, Michigan Compiled Laws of 1929 (Sec. 618.13 C. L. 1948), provides:

> "Upon the trial by the court of any question of fact or law, at law or in chancery, or any incidental issue arising therefrom, the decision of the court shall be given within sixty (60) days from the time such issue or cause was submitted to him."

Section 13888, Michigan Compiled Laws of 1929 (Sec. 604.7 C. L. 1948), provides:

> "No judge of any court shall sit as such in any cause or proceeding in which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; * * *"

Section 13889, Michigan Compiled Laws of 1929 (Sec. 604.8 C. L. 1948), provides:

> "No judge of an appellate court, or of any court to which a writ of certiorari or of error shall be returnable, shall decide or take part in the decision of any cause or matter which shall have been determined by him while sitting as a judge of any other court."

Section 13910, Michigan Compiled Laws of 1929 (Sec. 605.1 C. L. 1948), provides:

> "Every court of record shall have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct, in the following cases and no others:

"(1) Disorderly, contemptuous or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority,

* * *

"(3) All attorneys, counselors, * * * for any misbehavior in such office or trust * * *"

* * *

"(10) The publication of a false or grossly inaccurate report of its proceedings; but no court can punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decision had in such court."

Section 13911, Michigan Compiled Laws of 1929 (Sec. 605.2 C. L. 1948), provides:

"When any misconduct, punishable by fine and imprisonment, as described in the last section, shall be committed in the immediate view and presence of the court, it may be punished summarily by fine or imprisonment, or both, as hereinafter described."

Section 4, first paragraph, Rule 15 of Supreme Court Rules concerning the State Bar of Michigan, provides:

"If, upon investigation, the committee finds there is reasonable cause to believe that the accused member is guilty of such misconduct, it shall cause the complaint to be reduced to writing and filed with the grievance committee, and a formal hearing shall be held."

Section 5, Rule 15 of Supreme Court Rules concerning the State Bar of Michigan, provides:

"The member may also be represented by counsel, who shall enter a formal appearance."

The following provisions of the Constitution of the United States are involved herein:

FIRST AMENDMENT:

"Congress shall make no law * * * abridging the freedom of speech or of the press; * * *."

The FIFTH AMENDMENT:

"No person shall * * * be deprived of life, liberty or property without due process of law; * * *."

The SIXTH AMENDMENT:

"* * * the accused shall enjoy the right to a * * * trial by an impartial jury * * *, and to be informed of the nature and cause of the accusation * * * and to have the assistance of counsel for his defense."

The EIGHTH AMENDMENT:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The FOURTEENTH AMENDMENT:

"* * * No state shall make or endorse any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III.

Questions Presented in this Petition for a Writ of Certiorari:

1. Does this Court have jurisdiction to review?
2. Did the Michigan Supreme Court violate the guaranty of an impartial tribunal (Sixth Amendment to Constitution of the United States) when it sat on the review of its own complaint?
3. Did the Sixth Congressional District Grievance Committee violate the constitutional guaranty of an impartial tribunal (Sixth Amendment (supra)) when it sat and heard

the complaint it had prepared after a secret investigation on the complaint of the Michigan Supreme Court and after it had reported in writing that it had reason to believe this petitioner guilty?

4. Does Rule 15, Section 4, first paragraph of State Bar Rules as prepared by the Michigan Supreme Court violate the constitutional guaranty of an impartial tribunal (Sixth Amendment, supra) in its provision that the Grievance Committee investigate a complaint, reduce it to writing and then sit on the hearing thereon?

5. Did the Grievance Committee violate the constitutional guaranty of assistance of counsel (Sixth Amendment, supra) when it denied this petitioner a continuance to retain counsel after denial of motion to dismiss filed by this petitioner?

6. Did the Grievance Committee violate the constitutional guaranty of equal protection of the laws (Fourteenth Amendment to Constitution of United States) when it denied this petitioner an opportunity to argue all points raised in his motion to quash for want of jurisdiction and when it proceeded forthwith with the hearing after denying this petitioner's motions, to quash, for a bill of particulars and for a continuance to retain counsel, with the matter not yet at issue?

7. Did the 3-Judge Circuit Court violate the equal protection of the laws guaranty of the Fourteenth Amendment (supra) when it denied this petitioner an opportunity to argue in open court on his motion to dismiss going to the jurisdiction of said Court?

8. Did the Grievance Committee and the 3-Judge Circuit Court violate the due process of law guaranties of the Fifth and Fourteenth Amendments (supra) in recommending and ruling, respectively to punish this petitioner for statements made in printed briefs duly filed in the State Supreme Court without inquiry into the truth or falsity of such statements and without specifically identifying the exact statements upon which such punishment was based?

9. Did the Grievance Committee violate the due process clause and the equal protection of the laws clause of the Fourteenth Amendment and the due process clause of the Fifth Amendment (supra) when it proceeded to act in this matter after this petitioner had pointed out in his mo-

tion to dismiss that it lacked jurisdiction because of failure to show on the face of the record that the State Bar had referred this matter to it for action — which failure was admitted by said Grievance Committee in its opinion?

10. Did the State Courts violate the constitutional guaranties of freedom of speech and freedom of the press (First Amendment) when they punished this petitioner for language used in printed briefs filed in chancery appeals before the Michigan Supreme Court, even though the truth of such statements was not denied or looked into?

11. Was the punishment of this petitioner on charges of unprofessional conduct so vaguely stated that petitioner was without adequate notice to permit him to answer and defend, a violation of the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States?

12. Was the suspension of this petitioner from the practice of law and the taxation to him of all the costs incurred by four original respondents, when all testimony transcribed was put in by the other three respondents and their witnesses, even though this petitioner openly acknowledged from the outset that he alone wrote and filed the briefs in question, and the denial of a stay order to this petitioner under circumstances that strongly suggested entire proceeding groundless, was such action by the State Courts a violation of the Eighth Amendment prohibition against cruel and unusual punishment?

13. Was the refusal of the Grievance Committee and the State Courts to follow the "absolutely privileged" rule of Hartung vs. Shaw, 130 Mich. 177; their refusal to recognize the exclusive jurisdiction of the court in whose "immediate view and presence" any professional misconduct took place (Section 13910, 1 & 3, and Section 13911, Michigan Compiled Laws 1929 and Nichols v. Judge of Supreme Court, 130 Mich. 187, Stevenson v. Golden, 279 Mich. 710); their refusal to recognize the statutory requirement that a court "shall" give its decision "within sixty (60) days from the time such issue or cause was submitted * * *," (Sec. 14264 C. L. of 1929) — a violation of the Fourteenth Amendment guaranty of equal protection of the laws?

14. Was not this entire procedure void ab initio as in violation of the Fifth and Fourteenth Amendment guaranties of due process of law and as in violation of the Sixth Amendment guaranty of an impartial tribunal when the Michigan Supreme Court in whose "immediate view and presence" the briefs in question were filed, decided the chancery appeals in which said briefs were filed by this appellant, then with a full bench, including the disqualified members, issued the original complaining order herein under the entitlement of three decided chancery appeal cases?

IV.

Statement of Material Facts

This petitioner had for several years represented a group of farmers who claimed that their farms were being wrongfully confiscated through an "official conspiracy to defraud" being worked in the Lapeer Farmers Mutual Fire Insurance Association Receivership. In defense of his clients, this petitioner set forth in printed briefs filed in chancery appeals to the Michigan Supreme Court certain truths as to the actions of some of the corrupt and defrauding officials and, as a reprisal action, some of the conspiring officials contrived this disciplinary proceeding to prevent the exposure of the misconduct on the part of numerous state and county officials.

On June 27, 1950, the Michigan Supreme Court decided two of the chancery appeals by clients of this petitioner, Forbes vs. Stevens, Case No. 44643 and Forbes vs. Ziegenhardt, Case No. 44644, both reported in volume 328 Michigan Reports, with Justice Leland W. Carr, former trial Court Judge, who supervised said Receivership for approximately ten years, and Justice John R. Dethmers, former legal counsel for the receiver in lower court, acknowledging disqualification by not signing the opinions; however, entitled in same said two cases, along with a third related Lapeer insurance case No. 44553 reported in 327 Michigan 333, both said disqualified judges joined in the complaining order for disciplinary action supposedly entered on same said date, June 27, 1950. Prior thereto,

on December 3, 1947, in another Lapeer appeal, Case No. 43557 (Forbes Release), said Michigan Supreme Court entered an order of disqualification as to Justices Carr, Dethmers and Boyles. See Appendix Item II.

On July 12, 1950, the Commissioners of the State Bar, according to reported minutes of a meeting on said date, considered "the matter of the offense of the Sixth Congressional District lawyers who are complained against by the Supreme Court" and referred it to the Grievance Committee for said Sixth Congressional District.

Then "when the committee received a communication from the executive secretary, including a copy of the Supreme Court Order of June 27, 1950, we proceeded * * * in routine fashion as on any complaint * * *" as stated by the Grievance Committee in its opinion.

The "routine fashion" of procedure followed by the said Grievance Committee was to conduct a secret inquiry into the complaint filed, without a hearing, and having concluded that there was reasonable cause to believe this petitioner and others "guilty of the alleged offense" (even though the record shows no "alleged offense".), the Committee had a complaint prepared, "which was signed by the Executive Secretary of the State Bar, service thereof with notice of hearing was had * * * and on March 22, 1951 the hearing took place", according to the opinion of said Grievance Committee.

The same Grievance Committee that made an informal inquiry into the complaint of the State Supreme Court, concluded and formally reported that it had reason to believe this petitioner guilty, had a new complaint of its own prepared but had it signed by the State Bar, then served it, noticed it for hearing and sat on the hearing thereon. However, on said hearing, said Grievance Committee stated that it was not "concerned with the truth or falsity of the language complained of", denied this petitioner a right to argue the first six reasons and grounds specified in his written motion to quash going to the jurisdiction, then denied said motion to quash; it then summarily denied this petitioner's motion for a bill of particulars and his oral motion for a continuance to retain counsel and proceeded forthwith with the "hearing", without this petitioner having filed an answer to put the case at issue.

Said Grievance Committee did, however, give this petitioner permission to file an answer and brief — which were so filed.

However, the Grievance Committee held up its opinion for more than seven months, from April 15th to December 7th, then, after admitting that it had failed to show jurisdiction by setting forth the essential act of reference by the State Bar, it found good faith on the part of this petitioner, it found no canon of professional ethics violated by this petitioner, it found no specific language as the basis for action and still recommended suspension of this petitioner for some specific period.

Upon an Order to Show Cause entered out of the Circuit Court of Ingham County (the same Ingham Circuit Court that retained jurisdiction over the receivership of Lapeer insurance case), this petitioner appeared on January 29, 1952, to show cause why the recommendation of the Grievance Committee should not be followed. A formal Motion to Dismiss was filed on grounds of lack of jurisdiction and unconstitutionality, but the 3-Judge Circuit Court denied this petitioner the right to argue his motion in open court or otherwise show cause, but forthwith adjourned the proceedings and asked that any claims or arguments be submitted in written briefs.

After the matter was fully submitted to the 3-Judge Court on March 17, 1952, the opinion was delayed until July 14, 1952. Though the stated authority of the 3-Judge Court was to confirm or refuse to confirm the recommendations of the Grievance Committee, said court made findings, without additional evidence, which findings were at variance with the findings of the Grievance Committee. It referred to certain specific statements, even though the Grievance Committee had not done so, but the statements so selected are good examples of the statements of this Petitioner making reference to wrongful and fraudulent acts on the part of certain county and state officials. Without any indication that it had examined the records on appeal, upon which said statements in said briefs were based, without inquiry into the truth or falsity of the statements mentioned, the 3-Judge Court ordered this petitioner suspended for one year from the practice of law and until he shall have been reinstated and taxed all the costs to this peti-

tioner. An order was entered accordingly on September 24, 1952.

This petitioner appealed said order of suspension to the Michigan Supreme Court, moved, before and after the expiration of the year of suspension, for a stay order, which was, on each occasion denied, then, after several changes had been made in the personnel of said Court, procured the opinion of February 19, 1959 affirming the suspension, for the review of which this application for a Writ of Certiorari is filed.

V.

At all stages of the proceedings herein this petitioner raised the constitutional questions which form the basis of this petition for a Writ of Certiorari. In paragraph XII of the motion to quash filed by this petitioner before the Grievance Committee it was stated:

> "To proceed with this matter under the circumstances hereinbefore set forth would be to deprive this respondent of his rights, interests and property without due process of law and without equal protection under the law, in violation of the State and Federal Constitutions, particularly the said due process and equal protection clauses thereof.";

in paragraph 10 of this petitioner's answer to the "State Bar Complaint" filed with the Grievance Committee it was stated:

> "This respondent further answers said complaint alleging that said proceedings are in violation of due process of law because of the above and foregoing facts and circumstances; and that the refusal on the part of the committee to hear arguments of this respondent on the first six (6) reasons and grounds stated in his motion to quash also constituted a denial of due process of law, a denial to this respondent of equal protection under the law and constituted an unjust discrimination against this respondent, contrary to and in violation of the fundamental guarantees of both our Federal and State Constitutions".

and in paragraph 12 of the same said answer it was stated:

> "* * * this action is contrary to the fundamental and underlying principles of our constitution, of our courts, of our profession, of the law and of public policy, because it is an attempt to deny a lawyer the right and privilege of asserting with zest and conviction every defense available to his client under the law." * * * "This action is in all particulars inconsistent with the Constitution, inconsistent with public policy, inconsistent with the statutes of this state and inconsistent with the Canons of Professional and Judicial Ethics". * * *

In paragraph 12 of respondent's Motion to Dismiss filed before the 3-Judge Circuit Court it was stated:

> "That all the above and foregoing reasons go to the jurisdiction and involve the deprivation of rights and property of the respondent in violation of due progess of law and equal protection of the laws, contrary to the Constitutions of the United States and the State of Michigan";

in this petitioner's Application for Leave to Appeal and for Stay Order filed with the Michigan Supreme Court paragraph 26 points out the violations of due process of law, paragraph 27, the violations of equal protection under the laws and paragraph 28, the violations of the impartial tribunal guarantee of our Federal Constitution, with paragraph 30 pointing generally to this proceeding being repugnant "to the principles and theories of government expounded by our United States and Michigan Constitutions" and paragraph 35 reciting Constitutional Amendments among the authorities upon which said application was based — all showing, without reference to the arguments in several briefs, that constitutional violations have been raised by this applicant in timely manner along with questions upon the proper application of the laws to the facts and circumstances existing herein.

VI.

Reasons Why Certiorari Should Be Granted

In this matter there is every requisite for the issuance of a writ of certiorari; there is a final State Court ruling on federal questions contrary to rulings thereon by this Court; there is a State Court decision on a federal question of substance which has not heretofore been determined by this Court, but which related decisions indicate this Court do not stand in accord with said State Court; and the State Court made rulings at variance with the established laws of the State.

The Michigan Supreme Court served in the dual capacities of complaint and reviewing tribunal and the Grievance Committee served in the multiple capacities of investigator, complainant, prosecutor and magistrate — all not only contrary to our theories of separation of powers, our guaranties of due process of law and an impartial tribunal, as provided in the Federal Constitution, but, also, contrary to the ruling of this Court in In re Oliver, 333 U. S. 247, wherein a Michigan One-Man Grand Jury was found to have served in the multiple capacities of investigator, magistrate and trial court with "no semblance of due process of law in the scheme" when used to deprive any person of life, liberty or property.

In the instant proceeding the State Courts have suspended this petitioner from his long-standing practice of law because of language used by this petitioner in printed briefs filed by this petitioner in chancery appeals before the Michigan Supreme Court — without inquiry into the truth or falsity of such language (though undisputed on the record). This question is one of substance which has not been heretofore determined by this Court. The question is federal in scope because it involves a final opinion and an arbitrary denial of constitutional guaranties. This Court has held, in Near vs. Minnesota, 283 U. S. 679, that one has a right to criticise officials but is bound by the truth (or is liable for damages), and in Konigsburg vs. California Bar Examiners, 353 U.S. 252, this Court held that a California denial of admission to practice law because of uttered and published statements to which the State Bar

Examiners took exception, was arbitrary and unconstitutional and that censorship under any guise is constitutionally prohibited. The subject matter in the instant case is language used in printed briefs filed in arguments on appeal, which seems much more of a "privileged" type of presentation than the articles published in the Near Case and the speeches and published articles in the Konigsburg Case.

In Michigan the rule of "absolute privilege" of language used in arguments in judicial proceedings had been established in Hartung vs. Shaw, 130 Mich. 177, but the Michigan Supreme Court refused to follow its own ruling. Section 14264, Michigan Compiled Laws of 1929, expressly requires that a court "shall" decide any matter "within sixty (60) days" from the time such matter is fully submitted, but neither the Grievance Committee nor the 3-Judge Circuit Court complied with such statute. Sections 13888 and 13889, Michigan Compiled Laws of 1929, disqualify any judge who sat in the same matter in a lower court or who is interested in the outcome, as, for example, counsel for one of the parties in a lower court, but Justice Leland W. Carr supervised the Lapeer Receivership as Ingham County Circuit Judge for about ten years before he was appointed to the Michigan Supreme Court and Justice John R. Dethmers was attorney for the Receiver in said Lapeer Receivership cases throughout his term as Attorney General for the State of Michigan, immediately prior to his appointment to the Michigan Supreme Court, yet, in spite of written objections filed against them, and in spite of a determination of the said Michigan Supreme Court that they were disqualified, each of them joined in the original complaining order in this proceeding dated June 27, 1950, and entered in these three Lapeer Receivership Appeal cases, Toy, ex rel, Receiver vs. Lapeer Farmers Mutual Fire Insurance Company, Appeal by Turner, No. 44553, Forbes, Receiver vs. Stevens, No. 44643 and Forbes, Receiver vs. Ziegenhardt, No. 44644, in total disregard of their obvious disqualification. In Kittridge vs. Circuit Judge, 80 Mich. 200, it was specifically ruled that where a judge is disqualified in part of a proceeding he is disqualified as to the entire proceeding and all matters connected therewith, so the disqualification of Justices Carr

and Dethmers in the principal Lapeer Receivership cases disqualified them as to the entire proceeding and all matters connected therewith, like this proceeding to discipline this petitioner for arguments used in briefs filed in Lapeer Receivership Appeals.

The Michigan Supreme Court has acted in this proceeding as though it were above the law itself, above the Constitution of the United States, above rulings of this Court, above statutes of this state, above rules of law as established by State Court opinions, and this in itself is repugnant to all accepted principles of the law of the land. Said Michigan Supreme Court had the briefs before it in duly appealed chancery cases and did not see fit to take direct action on its own as to any of the language used in the arguments submitted by this petitioner, yet it sought to force disciplinary action through the State Bar and the lower State Courts, over which it has supervisory powers and, thusly, could "control" the entire proceeding. Such arbitrary action is the very basis upon which a writ of certiorari is justified in our jurisprudence and, in the instant case, thoroughly warrants a review by certiorari.

It will be noted that the 3-Judge Circuit Court and the Michigan Supreme Court attempt to get around the obvious fact that the Michigan Supreme Court was the actual complainant, the original complainant, in this proceeding by stating that the complaint was by the State Bar of Michigan, just as the Grievance Committee exerted every effort to make it appear that the formal complaint it prepared was actually from the State Bar. However, in addition to the references made herein which show that both the State Bar and the Grievance Committee acknowledged the complaining order dated June 27, 1950, as a complaint by the Michigan Supreme Court, the record shows that the Report of Grievance Committee after it had secretly investigated the said Supreme Court complaint, Exhibit "A" attached to the complaint prepared by said Grievance Committee and entitled "In the Matter of the Complaint of the State Bar of Michigan", was entitled "In the Matter of the Complaint of State Bar of Michigan" and "Supreme Court of the State of Michigan" — showing conclusively that said Grievance Committee considered the Michigan Supreme Court as a complainant. The record makes said Supreme

Court the original complainant herein, but it is now realized that the rule in Stockwell v. Township Board, 22 Mich. 341 that "no one can be a judge in his own cause" is fatal under such circumstances, so the finger is pointed toward the State Bar.

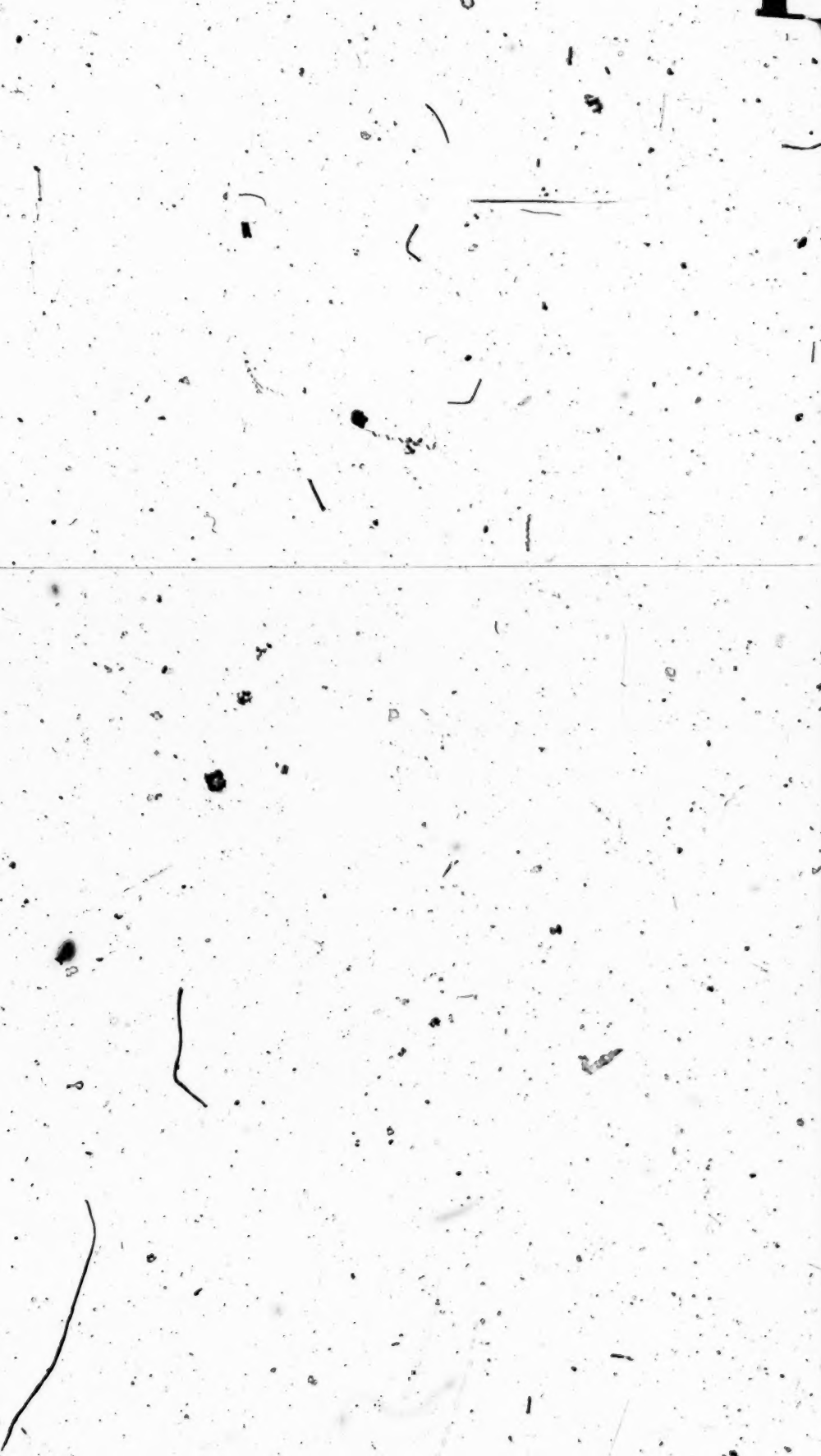
WHEREFORE, this petitioner prays that a Writ of Certiorari issue to the Supreme Court of the State of Michigan to review the opinion of said Court entered in this proceeding on February 19, 1959.

(s) Walter O. Estes,
Petitioner.

State of Michigan
ss:
County of Ingham

Walter O. Estes personally appeared before me on the 2nd day of July, 1959, and subscribed the above petition, acknowledging under oath that he had read the same and that it was true in content except where stated to be on information and belief, and that he believed such statements to be true.

(s) R. Howard Mate,
Notary Public, Ingham County, Michigan
My comm. exp. April 17, 1962.



APPENDIX

Item I—Opinion of Supreme Court of the State of Michigan

Item II—Order of Supreme Court of the State of Michigan (Re: Disqualification)

ITEM I.

OPINION OF SUPREME COURT OF THE STATE OF MICHIGAN

(Filed Feb. 19, 1959)

In the Matter of WALTER O. ESTES,
Member of State Bar.

BEFORE THE ENTIRE BENCH:
Edwards, J.

From Lord Mansfield to Joseph Welch, the lawyer who fought for cause or client against great odds has played a vital role in the defense of human freedom. We preface this opinion with recognition of the great value of the legal advocate and the frequent need for zeal and boldness in such advocacy.

The lawyer who believes in his client's cause is all the more effective therefor; and the courts have generally granted him a wide latitude in criticizing official actions of any one of the three branches of government. Courts are not, and should not be, immune to criticism. (See Konigsberg v. State Bar of California, 353 US 252, 268, 269). Indeed, the very first of the Canons of Professional Ethics of the Bar imposes a duty upon the lawyer to submit his grievances to the proper authorities "whenever there is proper ground for serious complaint of a judicial officer."

We preface this opinion with this restatement of general principles because we deal here with the appeal of an advocate suspended for one year for unprofessional conduct in his advocacy of his clients' cause and because our affirmance can only be construed as recognition of a limit upon the exercise of rights, the proper exercise of which we view with great favor.

This case represents an aftermath of one of the most bitter legal conflicts ever to occur in the State of Michigan. The controversy had its origin in the failure of the La-

peer Farmers' Mutual Fire Insurance Association and subsequent assessments made upon certain Lapeer county farmers as a result thereof. Its legal history is recorded in at least fourteen cases in which appeals were taken to, and ultimately decided by, this Court.

Appellant in this case was one of the attorneys for the farmers in several of these cases and filed a number of briefs in the course of their progress to final decision. Briefs filed in three cases occasioned the entry of a Supreme Court order of reference to the State Bar Association on June 27, 1950, directing attention to the remarks of counsel for appellants contained in said briefs.

After investigation the State Bar filed a formal complaint against appellant and three other lawyers whose names were on the same briefs, alleging professional misconduct and breach of the Canons of Professional Ethics in certain portions of the briefs referred to, which portions were attached as exhibits B.

The complaint was referred to the sixth district grievance committee for hearing and disposition under the Supreme Court Rules concerning the State Bar of Michigan, particularly Rule 15.

After notice of hearing and one adjournment, the complaint came on for hearing. At the time of hearing, appellant had filed no answer, although required to do so by State Bar Rule (Rule 15, § 6). He did appear and at the hearing he filed and argued a lengthy motion to dismiss, based largely upon an attack on the committee's jurisdiction. This motion was denied, as was a subsequent motion for adjournment, and the grievance committee went ahead to hear testimony on the complaint.

As far as appellee's case is concerned, the testimony consisted only of identification of the challenged briefs by the then deputy and subsequently clerk of the Supreme Court. Appellant offered no testimony but in oral argument made clear that he "wrote every word contained in those briefs." In fact, appellant went out of his way to assume complete responsibility for the challenged language of the briefs and reiterated his contention that it represented "the absolute truth."

Despite this contention, appellant contented himself with oral argument principally addressed to claimed de-

fects in the proceedings and to asserted lack of jurisdiction of the committee over the proceedings. He was twice asked whether he had any testimony to present and answered negatively, finally saying "I know of no evidence * * *. I think that is the evidence right there", apparently referring to the briefs.

The sixth district grievance committee, after allowing appellant to file an answer and considering the briefs submitted by the parties, filed its opinion in the matter. The committee found appellant and one other lawyer guilty of unprofessional and unethical conduct and recommended disbarment for a limited period of time.

In accordance with the rules governing the State Bar, the grievance committee certified its report and filed it with the Ingham County Circuit Court (State Bar Rule 15, §11, §13), whereupon the clerk thereof issued an order to the appellant to show cause why the report should not be confirmed, and the presiding circuit judge of Michigan designated three circuit judges to hear the matter (State Bar Rule 15, §15).

At the time of the hearing appellant had filed no objections to the report, although required to do so by State Bar Rule (Rule 15, §11). But he again appeared and filed a belated motion to dismiss challenging the jurisdiction of the court on various grounds. Objection was made to argument of his motion on the ground that counsel for the State Bar had not had a copy of the motion in time to prepare for argument (Court Rule 10, §2). The court sustained the objection, but allowed appellant to submit a brief for court consideration on the points concerned, with an answering brief to be filed by opposing counsel.

Appellant again tendered no testimony and answered in the negative the court's question as to whether there was anything else to come before the court.

Upon consideration of the certified record made before the grievance committee and its report and recommendations, and the briefs filed by the various parties, the three-judge court entered a formal opinion approving the grievance committee's report (and suspending appellant from the practice of law for one year, and until subsequent application for reinstatement. The opinion also found miti-

gating circumstances as to the other attorney found guilty of unprofessional conduct and ordered a private reprimand by the grievance committee as to him. From this portion of the order no appeal was taken.

On December 29, 1952, appellant filed his claim of appeal from the order of suspension entered in his case. The record on appeal was filed November 19, 1953. Nothing further was done until July 7, 1958, when appellant filed his brief and noticed the matter for hearing at the October 1958 term. The period of suspension has, of course, long since run (no stay having been granted), but no application for reinstatement has been filed. We are tendered no explanation for the extraordinary delay but assume the matter is finally brought to decision as a result of our recently-adopted *No Progress Rule* (Court Rule No. 70 B, effective April 14, 1958).

The opinion of the three-judge court held that appellant had been guilty of conduct which violated professional ethics, and particularly the preamble and Canons 1 and 15 of the Canons of Professional Ethics which follow:

"*Preamble*

"In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

"No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the Supreme Court of the State of Michigan as a general guide for the State Bar of Michigan. The enumeration of particular duties should not be

construed as a denial of the existence of others equally imperative, though not specifically mentioned.

"*Canon 1. The Duty of the Lawyer to the Courts*

"It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

"*Canon 15. How Far a Lawyer May Go in Supporting a Client's Cause*

"Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions that it is the duty of the lawyer whatever may enable him to succeed in winning his client's cause.

"It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

"The lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and in the exertion of his utmost learning and ability,' to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and

he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of the attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client."

The opinion of the three-judge court cited in particular certain portions of the briefs written by appellant which attacked the integrity of Judge Herman Dehnke, the judge who had originally tried some of the Lapeer cases:

> "The trial court not only failed and refused to assert the illegality of the appellants' contract and the inability on the part of the receiver to collect an assessment thereon, but collaborated with the receiver and his attorney by striking this material defense from the appellants' answer — the trial court stripped the appellants of their defense by striking all pleadings that pointed a finger at such illegality and thereby joined in the efforts of the receiver and his attorney to wrongfully, inequitably and unlawfully enforce an illegal contract.
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> "The manner in which this matter was conducted by the trial court, the type of notice given, the language of the opinion and the decision rendered, are all in violation of all concepts of fair and judicious handling of the rights and property of citizens by a court of justice, and help to confirm the claim of disqualification filed on two separate occasions against the trial judge in this matter. It is obvious that this petition of appellants was never heard on its merits and that the trial court never intended that it should be heard.
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> "This was an opinion held by the court because of his readiness to believe the vicious propaganda cir-

culated at every opportunity for the purpose of preventing the exposure of fraud.

• • •

"The trial court in this case has violated every rule in the books of sportsmanship, fair play, due process, fair trial, equal protection of the law, sanctity of contracts, duty of officers, honor and respect of the law of the land. He would shield and protect those who have violated the insurance laws of the State and punish those who were supposed to have been protected by those laws; he would overlook the flagrant disregard of the insurance laws by the commissioner of insurance and the attorney general and overreach his own authority and jurisdiction, yes, even violate the fundamental law of the land, the statutes and Canons of Judicial Ethics, in his zeal to punish parties who are legally entitled to the protection of those officers and the court; he would put the honor and reputation of the court on the block in obvious violation of his oath of office, when by simply following the rules of law, principles of justice and the principles of fair play, he could help so much to place the court on the pedestal of high respect where it must be kept if our system is to work."

All the quoted material is extracted from the brief written and filed by appellant in Forbes v. Ziegenhardt, 328 Mich. 187. This appeal was from a denial by Judge Dehnke of a petition to vacate a decree of foreclosure entered July 26, 1943, and from which no appeal was taken. The petition was filed September 8, 1948. Among other things it alleged that fraud had been perpetrated upon the court by plaintiff Forbes in the original foreclosure suit, and that the petitioners now possessed new evidence tending to prove fraud. The petition made no charges as to the trial judge's conduct in the original proceedings and alleged no facts which in any way reflected upon his judicial integrity.

Judge Dehnke dismissed the petition upon motion and after argument and briefs upon the doctrine of res adjudicata, holding that the alleged "new facts" of the pe-

tition were all facts known to, or readily available to, petitioners at the time of the original proceeding. The question of whether he was right or wrong in his decision is not now before this Court. Suffice it to say that his decision was affirmed by the Supreme Court in Forbes v. Ziegenhardt, supra, and that at no place in the record of this case do we find one fact recited from which it could be deduced that the trial judge had been guilty of fraud, corruption or, indeed, of any sort of improper conduct unless his entering of a decision in a hotly-disputed case upon what he conceived to be the law could be so termed.

We view the language set forth above from appellant's brief in the Ziegenhardt Case as a direct attack upon the integrity of the trial judge. Neither in the Ziegenhardt Case, nor in the instant proceeding, have we noted any attempt by the appellant to suggest facts which could represent reasonable grounds for such charges except his arguments pertaining to claimed error in the judge's decision.

The fact that a lawyer deeply believes a trial judge has made a serious error in deciding an important case is hardly proper ground for his charging in an official court record that the judge had violated his oath of office and illegally and unlawfully collaborated with the prevailing party.

There is no indication here of "proper ground for serious complaint of a judicial officer" within the meaning of Canon 1 of the Canons of Professional Ethics. The language used, on the contrary, when totally unsupported by fact, the language of insult and contempt. The fact that it might well be punishable in contempt proceedings (See CL 1948, 605.1, Stat. Ann. 27.511) does not make it any the less unprofessional in character.

Appellant's brief relies strongly upon the following language from Hartung v. Shaw, 130 Mich. 177, 179:

> "If statements made in the course of judicial proceedings, in pleadings or in argument, are relevant, material, or pertinent to the issue, their falsity or the malice of their author is not open to inquiry. They are then absolutely privileged."

Without re-examining this holding, we feel that it is obviously inapplicable to the current situation. Hartung

v. Shaw was a libel action and not a proceeding which, as here, concerned a charge of violation of professional ethics.

In the leading case in Michigan dealing with a similar problem, this Court said:

> "An attorney ought not to be disbarred unless the duty of the court is very clear. We are not unmindful of the fact that an attorney is privileged to go great lengths in the defense of himself or his client in proceedings in court, without being held responsible out of court for what he has said or done in court; but this privilege does not carry with it the right to charge fellow attorneys and the presiding judge with conspiracy and corruption, when there is no adequate basis for such a charge. The law is tersely stated in People vs. Green, 9 Colo. 506: "'Neither the letter nor the spirt of the attorney's privilege permits him to enter our courts and spread upon judicial records charges of a shocking and felonious character against brother attorneys, and against judges engaged in the administration of justice, upon mere rumors coupled with facts which should of themselves create no suspicion of official corruption in a just and fair mind. And although, in actions of libel and slander, it has been thought wise to exempt them from liability for defamatory words published or spoken in the course of judicial proceedings, provided such words are material, in a disbarment proceeding the recognition of such a privilege could neither secure justice nor advance the independence of the bar. On the contrary, its inevitable tendency would be to destroy the respect due to the profession as well as to the bench, and cripple the influence and usefulness of both'." In re Mains, 121 Mich. 603, 610.

In proceedings of this sort, our review is in the nature of a writ of certiorari. We do not hear the appeal *de novo*. Attorney General v. Lane, 259 Mich. 283. We find in this record "no adequate basis" for the charges made by appellant. We do find evidence which warranted the three-judge court in holding that appellant had violated those portions of the Canons of Professional Ethics which we have previously quoted.

We have reviewed the complete record with care. We cannot see that any prejudicial error was made in the investigation, the filing of the complaint by the State Bar, in the hearing of the grievance committee, or at the show-cause hearing before the three-judge court. Appellant has his own dilatoriness and disinclination to present testimony to blame for any inadequacies in the present record. We find no abuse of due process.

Nor do we believe that this Court is deprived of jurisdiction to hear this appeal by the fact that this Court originally forwarded the briefs in question to the State Bar association for investigation. The complaint acted upon was that of the State Bar.

The basic penalty of one year's suspension imposed by the order of the three-judge court has, of course, long since been served. On the record presented here, since the offense complained of was specific and not of a continuing nature, the added requirement of application for reinstatement must be regarded as largely a formality, provided, of course, there has been compliance with the order. It would seem highly desirable for said requirement to be met without further delay so as to bring to a close an unhappy chapter of Michigan legal history.

Affirmed.

Justice Black took no part
in this decision

ITEM II.

ORDER OF SUPREME COURT OF THE STATE OF MICHIGAN (RE: DISQUALIFICATION)

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the third day of December, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable

*LELAND W. CARR,**
Chief Justice,
HENRY M. BUTZEL,
GEORGE E. BUSHNELL,
EDWARD M. SHARPE,
*EMERSON R. BOYLES,**
NEIL E. REID,
WALTER H. NORTH,
*JOHN R. DETHMERS,**
Associate Justices.

Attorney General, ex rel.,
Commissioner of Insurance,
Plaintiff,
vs. 43557
Lapeer Farmers Mutual Fire Insurance Ass'n, et al.,
Defendants and Appellants.

In this cause a petition is filed by appellants for an order vacating decree filed herein dated August 4, 1947.

It appearing from the records of this Court that Justices Carr, Dethmers and Boyles have disqualified themselves and did not sit in this cause and took no part therein;

It further appearing that the only changes made in the proposed decree were changes requested by the appellants;

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* (Names in Italics were crossed out on original copy).

and that the proposed decree before being signed was submitted to and approved by all of the Justices of this Court except those who disqualified themselves, and counsel for the appellants was so advised at the hearing on settlement; and all of the other arguments of appellants advanced for vacating the said decree having been considered and found without merit, and

It further appearing that Justice Butzel has no interest in said cause except the desire to see full equity and justice done to all parties concerned, and that he is not disqualified,

It is ordered that the petition of appellants to vacate the decree be, and the same is, hereby denied.

STATE OF MICHIGAN — ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 8th day of December, in the year of our Lord one thousand nine hundred and forty-seven.

(SEAL)

(s) Jay Mertz.
By Hugh H. Carpenter,
Deputy Clerk.